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In the Supreme Court
of the United States

No. 301, October Term, 1962

GEORGE WEIGEL,

Petitioner,

v.

PARTENWEEDEREI .MS BELGRANO and RUDOLPH A. OETKER,

Respondents.

BRIEF OF THIRD PARTY RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Alfred A. Hampson,
1011 Equitable Bldg.
Portland 4, Oregon,
Counsel for Third Party Respondent.

Nathan J. Heath,
1005 Equitable Bldg.,
Portland 4, Oregon,
Of Counsel for Third Party Respondent.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 8-62

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Petitioner sets out in his petition for a Writ of Certiorari three reasons why he believes this case merits review by this Court: 1) Determination of the applicability of the warranty of seaworthiness is of importance to a substantial class of workmen. 2) Difficult questions are raised respecting determination of the applicability of the warranty in future cases. 3) The decision of the Court of Appeals conflicts with decisions of this Court and others. The instant case presents none of these questions.

Petitioner was a dock worker. He had no occasion to go aboard the vessel. He had no occasion to handle

ship's gear or equipment (Tr. 472, 473). Cases respecting injuries resulting from unseaworthiness of a vessel to workmen similarly situated to Petitioner will be rare. Such workmen never are aboard and are only intermittently near vessels. Slight exposure to the perils of ships does not lead to frequent injuries. The issue raised by Petitioner is, therefore, of little over-all significance.

Any class of workers would deem it important to be eligible for compensation for injury in excess of state workmen's compensation rates, even for rare and unusual types of accidents. This, however, does not justify consideration of this case by this Court nor would it justify rewriting the law respecting the warranty of seaworthiness to include every workman who merely brings cargo near the ship. Such extension would include taxi drivers bringing passengers, delivery men bringing ship's stores, railroad employees switching cars on the dock; and many other clearly land workmen.

A battle of experts in every case, envisioned by Petitioner, does not follow from the decision of the Court of Appeals. The overwhelming bulk of cases that arise fall clearly within or without the ambit of the warranty of seaworthiness as heretofore defined by this Court and lower courts. Responsible lawyers recognize settled issues and do not litigate them. However, when that rare case arises where a serious question of the applicability of the doctrine is inherent in the facts and is put in issue by counsel, there is no unusual burden on claimant or court to require and receive proof of fact.

The problems of the quantum and nature of proof necessary to justify a finding of applicability of the warranty may be of interest to this Court. These problems are not presented in this case, however, because there was no pertinent evidence whatsoever presented, except evidence tending to negate the warranty.

The decision of the Court of Appeals in this case does not conflict with the decisions of this Court, or of any other court. This Court has treated the availability of the warranty of seaworthiness as a fact question. See, e.g., *United N. Y. & N. J. Pilots* v. *Halecki*, 358 U.S. 613 (1959). The Court of Appeals simply held the petitioner could not prevail on a fact question where no evidence was presented.

Nor is the decision in conflict with *Salem* v. *U. S. Lines*, — U.S. —, 8 L. Ed. 2d 313 (May 28, 1962). In that case expert opinion was held unnecessary to permit a jury to infer a vessel to be unseaworthy for want of hand rails or any other device to assist seamen in passage from a ladder to a crow's nest. Certainly a person of ordinary intelligence with pictures and diagrams before him requires no expert guidance to determine whether a person could safely climb through a particular part of a vessel. That case bears no relevancy to the instant case. In the instant case the trier of fact was given no factual basis to arrive at a standard of what inspection, if any, a prudent shipowner would or should make. He could not be expected to know the customs and problems of shipboard life that dictate to a prudent shipowner the frequency and na-

ture of inspections. No testimony was offered showing what a reasonable inspection is. Consequently, there was no basis for the inference that a reasonable inspection would have revealed the defect. The trial court simply concluded a reasonable inspection was not made from the fact that an accident occurred. *Salem* v. *U. S. Lines*, supra, does not justify such an inference.

A Writ of Certiorari should be denied.

ALFRED A. HAMPSON,

1011 Equitable Building,
Portland 4, Oregon,
Counsel for Third Party Respondent.

NATHAN J. HEATH,
1005 Equitable Building,
Portland 4, Oregon,
Of Counsel for Third Party Respondent.